

July 13, 1948

Birt Gardner,
Water Commissioner
East Fork Virgin River
Mount Carmel, Utah

Dear Sir:

Re: APPLICATIONS NOS. 17979 & 16751 AND
DISTR. EAST FORK VIRGIN RIVER

This acknowledges receipt of your letter dated July 6 in which you refer to water rights of J. W. Morrison and David L. Foote. You state that in 1946, Mr. J. W. Morrison filed Application No. 17979 for 0.17 sec. ft. of water, whereas Mr. Foote has a certificate of appropriation for 3.0 sec. ft. of water with a priority of June 10, 1922.

Records in this office show that J. W. Morrison on August 14, 1946 filed Application No. 17979 to appropriate 0.17 sec. ft. of water to be used from April 1 to October 1 of each year for irrigation purposes. This application has not yet been approved. On July 23, 1945 the same party filed Application No. 16751 to appropriate 0.060 sec. ft. of water to be diverted from an unnamed spring for domestic purposes. This application has not yet been approved. Before Mr. Morrison can secure certificates of appropriation, which are prima facie evidence of the water rights, it will be necessary first to have the applications approved, put the water to beneficial use, and file in this office, proofs of appropriation satisfactory to the state engineer.

It is noted that one I. L. Bowers apparently has, or did have, a diligence right with a priority date of 1890 and that of this 0.23 sec. ft., 0.17 sec. ft. apparently has been lost by nonuse. It appears that when Mr. Morrison filed Application No. 17979 to appropriate 0.17 sec. ft. of water, he and others are under the impression that this put him in the position which Mr. Bowers formerly occupied relative to the water right which Mr. Bowers lost. This assumption is without foundation.

When a water right is lost by nonuse, it cannot be covered with its original priority by a subsequent application. The loss by nonuse puts the water back as common water in the stream to be distributed to the users thereof in accordance with their priorities. If Mr. Morrison filed an application later than all other users in question, then his priority will have a date later than all other users. He cannot be put in the position of taking Mr. Bowers' priority.